

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ELECTRIC FRANCHISE AND RELATED RULES	DOCKET NO. RMU-02-11
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ORDER COMMENCING RULE MAKING

(Issued November 22, 2002)

Pursuant to the authority of Iowa Code §§ 17A.4, 476.1, 476.1A, 476.1B, and chapter 478, the Utilities Board proposes to adopt the rules attached hereto and incorporated by reference. These rules propose to amend 199 IAC chapters 11 and 25. The amendments are in response to Executive Orders 8 and 9 and recent amendments to Iowa Code § 476.13. The reasons for proposing these amendments to the electric franchise and related rules are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-02-11, is commenced for purposes of receiving comments upon the proposed rules attached to this order.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 22nd day of November, 2002.

UTILITIES DIVISION [199]

Notice of Intended Action

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, and chapter 478 (2001 Supp.), the Utilities Board (Board) gives notice that on November 22, 2002, the Board issued an order in Docket No. RMU-02-11, In re: Electric Franchise and Related Rules. The Board is proposing revisions to 199 IAC 11 and 25 in response to Governor Vilsack's Executive Orders 8 and 9 and House File 2341. House File 2341, passed in 2002, amended Iowa Code § 478.13 to provide that electric line franchise extension applications are to be less extensive than original applications and proceedings. Prior to passage of the amendment, Iowa Code chapter 478 did not differentiate between original franchise and franchise extension proceedings.

The Board will not detail here the reasons for proposing the rules because those reasons have been delineated in a memorandum dated October 24, 2002, entitled "Proposed Amendments to Electric Franchise and Related Rules in 199 IAC 11 and 25." The Board approved the recommendations made in the memorandum. The memorandum is available at the Board's website, <http://www.state.ia.us/iub>. This memorandum is also available in hard copy for review or purchase at the Board's Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069; telephone (515) 281-6240.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before December 31, 2002, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on February 14, 2003, in the Board's hearing room at the address listed above. The Board does not find it necessary to propose a separate waiver provision in this rule-making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these rules.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and chapter 478 (2001 Supp.).

The following amendments are proposed.

Item 1. Rescind rule 199—11.1 and adopt the following **new** rule 199-11.1:

199—11.1(478) General information.

11.1(1) Authority. The standards pertaining to electric transmission lines in this chapter are prescribed by the Iowa utilities board pursuant to Iowa Code sections 478.19 and 478.20. This chapter shall apply to any individual, company, corporation, or city engaged in the construction, operation, and maintenance of electric transmission lines to the extent provided in Iowa Code chapter 478.

11.1(2) Purpose. The purpose of this chapter is to establish standards for electric franchise proceedings before the Iowa utilities board.

11.1(3) Iowa electrical safety code. Overhead and underground electric supply line minimum requirements to be applied in installation, operation, and maintenance are found in 199—chapter 25, Iowa electrical safety code.

11.1(4) Date of filing. A petition for franchise shall be considered as filed with the board on the date of the United States Postal Service postmark if the filing is made by mail, or on the date received at the board's records center if the filing is made in person or sent other than by United States mail.

11.1(5) Franchise - when required. An electric franchise shall be required for the construction, operation, and maintenance of any electric line which is capable of operating at 69,000 volts or more outside of cities, except that a franchise is not required for electric lines located entirely within the boundaries of property owned by an electric company or an end user.

11.1(6) Definitions. For the administration and interpretation of this chapter, the following words and terms, when used in these rules, shall have the meaning indicated below:

"Board" means the utilities board within the utilities division of the department of commerce.

"Capable of operating" shall mean the standard voltage rating at which the line, wire, or cable can be operated consistent with the level of the insulators and the conductors used in construction of the line, wire, or cable based on

manufacturer's specifications, industry practice, and applicable industry standards.

11.1(7) *Route selection.* The planning for a route that is the subject of a petition for franchise must begin with roads, railroad rights of way, and/or division lines of land consistent with the provisions of Iowa Code section 478.18. When a route near and parallel to these features has points where electric line construction is not practical and reasonable, deviations may be proposed at those points, when accompanied by a proper evidentiary showing, generally of engineering reasons, that the initial route or routes examined did not meet the practicable and reasonable standard. Although deviations based on landowner preference or minimizing interference with land use may be permissible, the petitioner must be able to demonstrate that route planning began with a route or routes near and parallel to roads, railroad rights of way, or division lines of land.

This subrule is intended to implement Iowa Code section 478.18.

Item 2. Amend the first paragraph of rule 11.2 to read:

199—11.2(478) Form of petition for franchise, ~~extension~~, or amendment of franchise. Petition for a new or amendment franchise action by the board shall be made in the following manner. Exhibits in addition to those required by this rule may be attached when appropriate.

Item 3. Amend paragraph 199—11.2(3)"e" as follows:

e. The name and boundaries of any public lands or parks, recreational areas, preserves or wildlife refuges. ~~This information need only be provided with~~

~~petitions proposing construction of a new electric line or relocation of an existing electric line.~~

Item 4. Amend paragraph 199—11.2(3)"f" as follows:

f. All electric supply lines, including petitioner's, within six-tenths of a mile of the route, including the nominal voltage, whether overhead or buried, and the name and address of owners. Any line to be removed or relocated shall be designated.

Item 5. Amend subrule 199—11.2(5) by adding new paragraph "e."

e. If a new franchise must be sought for an existing electric line, historical information as specified in 199 IAC 11.2A(5)"a"-"d."

Item 6. Amend subrule 199—11.2(7) as follows:

11.2(7) Exhibit F. The showing of notice to potentially ~~affect~~ affected parties as required by 199 IAC 11.5(4).

Item 7. Adopt new rule 11.2A:

199—11.2A(478) Form of petition for extension of franchise. Petition for an extension of franchise action by the board shall be made in the following manner. Exhibits in addition to those required by this rule may be attached when appropriate.

11.2A(1) Petition. Petition shall be made on forms prescribed by the board, shall be notarized, and shall have attached all required exhibits.

11.2A(2) Exhibit A—a legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning and ending points of the line, and whether the route is on public,

private, or railroad right-of-way. The description shall identify any termini located in other counties.

11.2A(3) Exhibit B—a map showing the route of the line drawn with reasonable accuracy considering the scale. Two copies shall be submitted. The map may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

a. The route of the electric line which is the subject of the petition, including starting and end points, and, when paralleling a road or railroad, which side it is on. Line sections with double circuit construction or underbuild shall be designated.

b. The name of the county, county and section lines, section numbers, and the township and range numbers.

c. The location and identity of roads, railroads, major streams and bodies of water, and any other significant natural or man-made features or landmarks.

d. The names and corporate limits of cities.

e. All electric supply lines, including petitioner's, within six-tenths of a mile of the route, including the nominal voltage, whether overhead or buried, and the names of the owners.

11.2A(4) Exhibit C. Technical information and engineering specifications describing typical materials, equipment, and assembly methods as specified on forms provided by the board.

11.2A(5) Exhibit D. The exhibit shall consist of a written text containing the following:

a. A listing of all existing franchises for which extension in whole or in part is sought, including the docket number, franchise number, date of issue, county of location, and to whom granted.

b. A listing of all amendments to the franchises listed in "a," including the docket number, amendment number, date of issue, and the purpose of the amendment.

c. A description of any substantial rebuilds, reconstructions, alterations, relocations, or changes in operation not included in a prior franchise or amendment action.

d. A description of any changes in ownership or operating and maintenance responsibility.

e. An allegation, with supporting testimony, that the line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.

f. Any other information or explanations in support of the petition.

Item 8. Amend paragraph 199—11.3(2)"a" as follows:

a. A petition for franchise shall be filed with the board for the construction of any electric line outside of the city which is capable of operating at a nominal voltage of 69 kilovolts or more, except that a franchise is not required for electric lines located entirely within the boundaries of property owned by an electric company or an end user.

Item 9. Amend paragraph 199—11.5(2)"a" as follows:

a. Whenever a petition for a franchise, extension of franchise, or amendment of franchise is filed with the board, the board shall prepare a notice addressed to the citizens of each county through which the line or lines extend. The petitioner shall cause this notice to be published in a newspaper located in each county for two consecutive weeks. Proof of publication ~~and proof of payment of publication costs~~ shall be filed with the board. This published notice shall constitute sufficient notice to all parties of the proceeding, except owners of record and parties in possession of land to be crossed for which voluntary easements have not been obtained at the time of the first publication of the notice.

Item 10. Amend subrule 199—11.5(4) as follows:

11.5(4) *Notice to other parties.* Petitioners for a franchise, ~~extension of franchise,~~ or amendment to franchise shall give written notice by ordinary mail, mailed at the time the petition is filed with the board, accompanied by a map showing the route of the proposed electric supply line, to the affected parties described in 11.2(3)"~~e~~ f" through "j k" and the Iowa department of transportation. One copy of each letter of notification or one copy of the letter accompanied by a written statement listing all parties to which it was mailed, ~~and the date of mailing,~~ and a copy of the map sent with the letters shall accompany the petition when it is filed with the board.

Item 11. Amend subrule 199—11.5(5) by adding a **new** paragraph "c" as follows:

c. If the facilities authorized by a franchise are not constructed in whole or in part within two years of the date the franchise is granted, or within two years after final unappealable disposition of judicial review of a franchise order or of condemnation proceedings, the franchise shall be forfeited unless the franchise holder petitions the board for an extension of time pursuant to Iowa Code section 478.21.

Item 12. Rescind and reserve Rule 199 IAC 11.5(6).

Item 13. Amend subrule 199—11.6(1) as follows:

11.6(1) *Common use construction.* Whenever an overhead electric line capable of operating at ~~34.5~~ 69 kilovolts or more is built or rebuilt on public road rights-of-way located outside of cities, all parallel overhead electric supply circuits on the same road right-of-way shall be attached to the same or common line of structures unless the board authorizes, for good cause shown, the construction of separate pole lines.

Item 14. Add **new** rule 199—11.8.

199—11.8(478) Fees and expenses. The petitioner shall pay the actual unrecovered cost incurred by the board attributable to the processing, investigation, and inspection related to a petition requesting an electric franchise.

Item 15. Rescind rule 199—25.1 and adopt the following **new** rule rule 199—25.1:

199—25.1(476,476A,478) General information.

25.1(1) Authority. The standards relating to electric and communication facilities in this chapter are prescribed by the Iowa utilities board pursuant to Iowa Code sections 476.1, 476.2, 476A.12, 478.19, and 478.20.

25.1(2) Purpose. The purpose of this chapter is to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities. The rules apply to electric and communication utility facilities located in the state of Iowa and shall supersede all conflicting rules of any such utility. This rule shall in no way relieve any utility from any of its duties under the laws of this state.

Item 16. Amend subrules 199—25.2(2) and (3) as follows:

25.2(2) Modifications and qualifications to ANSI C2. The standards set forth in ANSI C2 are modified or qualified as follows:

a. Introduction to the National Electrical Safety Code.

(1) The following paragraph is ~~added to NESC 011~~ replaces NESC 011B:

"The National Electrical Safety Code (NESC) covers utility facilities and functions from the point of generation by the utility, or delivery from another entity, of electricity or communications signals through the utility system to the point of delivery to a customer's facilities."

(2) NESC 013A2 is modified to read as follows: "Types of construction and methods of installation other than those specified in the rules may be used experimentally to obtain information, if done where: ~~qualified supervision is provided and prior approval is obtained from the board.~~

- a. Qualified supervision is provided,
 - b. Equivalent safety is provided,
 - c. On joint use facilities, all affected parties agree, and
 - d. Prior approval is obtained from the Iowa utilities board ”
- b. Minimum clearances.

(1) In any instance where minimum clearances are provided in Iowa Code chapter 478 which are greater than otherwise required by these rules, the statutory clearances shall prevail.

(2) The following clearances shall apply to all lines regardless of date of construction: NESC 232, vertical clearances for "Water areas not suitable for sailboating or where sailboating is prohibited," "Water areas suitable for sailboating. . .," and ~~"Public or private land and water areas posted for rigging and launching sailboats~~ Established boat ramps and associated rigging areas . . ."; and NESC 234E, "Clearance of Wires, Conductors, ~~or~~ Cables or Unguarded Rigid Live Parts Installed Over or Near Swimming Areas With No Wind Displacement."

(3) Table 232–1, Footnote ~~19~~ 21, is changed to read: "Where the U.S. Army Corps of Engineers or the state, or a surrogate thereof, issues a crossing permit, the clearances of that permit shall govern if equal to or greater than those required herein. Where the permit clearances are less than those required herein and water surface use restrictions on vessel heights are enforced, the permit clearances may be used."

(4) Except for clearances near grain bins, for measurements made under field conditions, the board will consider compliance with the overhead vertical line clearance requirements of subsection 232 and Table 232–1 of the 1987 NESC indicative of compliance with the ~~1997~~ 1990 through 2002 editions of the NESC. (For an explanation of the differences between 1987 and subsequent code edition clearances, see Appendix A of the ~~1997~~ 1990 through 2002 editions of the NESC.)

c. *Rescinded IAB 8/5/92, effective 9/9/92.*

d. Rule 264E.1 is changed to read:

"The ground end of anchor guys exposed to pedestrian or vehicle traffic shall be provided with a substantial marker not less than eight feet long. The guy marker shall be of a conspicuous color such as yellow, orange, or red. Green, white, gray or galvanized steel colors are not reliably conspicuous against plant growth, snow, or other surroundings. Noncomplying guy markers shall be replaced as part of the utility's inspection and maintenance plan.

e. There is added to Rule 381G:

(3) Pad-mounted and other above-ground equipment not located within a fenced or otherwise protected area shall have affixed to its outside access door or cover a prominent "Warning Caution" or other appropriate ~~warning~~ sign of highly visible color, warning of hazardous voltage and including the name of the utility. ~~These signs shall be in place on or before December 31, 1992.~~ This rule shall apply to all signs placed or replaced after (insert effective date of revised rule).

f. There is added to the first paragraph of Rule 110.A.1, after the sentence stating, "Entrances not under observation of an authorized attendant shall be kept locked," the following sentence:

Entrances may be unlocked while authorized personnel are inside. However, if unlocked, the entrance gate must be fully closed and must also be latched or fastened if there is a gate–latching mechanism.

25.2(3) Grain bins.

a. Utilities shall conduct annual public information campaigns to inform farmers, farm lenders, grain bin merchants, and city and county zoning officials of the hazards of and standards for construction of grain bins near power lines.

b. An electric utility may refuse to provide electric service to any grain bin built near an existing electric line which does not provide the clearances required by The American National Standards Institute (ANSI)C2–1997 2002“National Electrical Safety Code,” Rule 234F. This paragraph “b” shall apply only to grain bins loaded by portable augers, conveyors or elevators and built after September 9, 1992, or to grain bins loaded by permanently installed augers, conveyors, or elevator systems installed after December 24, 1997.

Item 17. Amend paragraph 199—25.2(3)"a" as follows:

a. Electric utilities~~Utilities~~ shall conduct annual public information campaigns to inform farmers, farm lenders, grain bin merchants, and city and county zoning officials of the hazards of and standards for construction of grain bins near power lines.

Item 18. Amend the first sentence of rule 199—25.5 as follows:

199—25.5(476,478) Accident reports. ~~A~~An electric utility shall file with the board a written report on any accident to an employee or other person involving contact with its energized electrical supply facilities which results in a fatality, admission to a hospital, \$10,000 in damages to the property of the utility and others, or any other accident considered significant by the utility.

Item 19. Rescind and reserve subrule 11.6(2)).

Item 20. Rescind existing subrule 199 IAC 25.2(4) and replace with the following:

25.2(4) *Joint use construction.* Where it is mutually agreeable between the electric supply company and the communication or cable television company, communication circuits or cables may be buried in the same trench or attached to the same supporting structure, provided this joint use is permitted by and is constructed in compliance with the Iowa electrical safety code.

November 22, 2002

/s/ Diane Munns

Diane Munns
Chairman